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SECOND DIVISION
BIRDSONG, P.J.,
BLACKBURN AND RUFFIN, JJ.

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION to be deemed timely filed. (Court of Appeals Rules 4 and 37, January, 1, 1995)

February 6, 1995

In the Court of Appeals of Georgia

A94A1542. DALTON v. THE STATE. (Bi-68C)

BIRDSONG, Presiding Judge

Jerry Wayne Dalton appeals his conviction for boating under the influence of alcohol. He contends his boat was unlawfully stopped on Lake Lanier because the evidence showed the Department of Natural Resources' rangers randomly stopped his boat without probable cause or reasonable suspicion that he had committed an offense. *Held*:

The record shows that the rangers stopped the boat to conduct a safety inspection and only thereafter suspected that Dalton was under the influence. Dalton was then administered a breath test and two hours after he was stopped his blood alcohol content was .11 grams percent.

Dalton asserts that the rangers stopped his boat without probable cause to conduct an inspection under OCGA § 52-7-25(a): "Any person empowered to enforce this article and any rule or regulation adopted pursuant hereto shall have the authority to stop and board any

vessel subject to this article or any such regulation for the purpose of inspection or determining compliance with this article." Dalton contends that randomly stopping boats under this article was unconstitutional because police cannot randomly stop and inspect automobiles under *Delaware v. Prouse*, 440 U. S. 648 (99 SC 1391, 59 LE2d 660).

As Dalton challenged the constitutionality of OCGA § 52-7-25(a), this court transferred the appeal to the Supreme Court. The Supreme Court, however, returned the appeal to this court. As the Supreme Court returned this case to this court, there is no constitutional issue for resolution. "The transfer of the case by the Supreme Court to this court is a final determination that no constitutional question was in fact properly raised or, if so raised, that it was not meritorious." *Krause v. Vance*, 207 Ga. App. 615, 622 (428 SE2d 595).

Therefore, the only issue for resolution by this court is whether the stop was lawful. As the evidence shows the stop of Dalton's boat was authorized by OCGA § 52-7-25(a), the trial court correctly denied Dalton's motion to suppress.

Judgment affirmed. Blackburn and Ruffin, JJ., concur.

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 27, 1995

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A94A1542

JERRY WAYNE DALTON V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 27 1995

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

/s/ William L. Matir

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: May 05, 1995

Winship E. Rees
246 Pike Street
Lawrenceville GA 30245

Case No. S95C0937

JERRY WAYNE DALTON V. THE STATE

COURT OF APPEALS CASE NO. A94A1542

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk